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**FILED & ENTERED**

**AUG 25 2022**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY bolte DEPUTY CLERK

Attorneys for Chapter 11 Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SANTA ANA DIVISION**

In re:

TRX HOLDCO, LLC, a Delaware limited  
liability company,

Debtor and Debtor in Possession.

Lead Case No.: 8:22-bk-10948-SC

Jointly administered with:  
8:22-bk-10949-SC  
Chapter 11 Cases

In re:

FITNESS ANYWHERE LLC, a Delaware  
limited liability company, dba TRX and TRX  
Training,

Debtor and Debtor in Possession.

**ORDER GRANTING DEBTORS' MOTION  
FOR AN ORDER: (1) APPROVING SALE  
OF SUBSTANTIALLY ALL OF THE  
DEBTORS' ASSETS FREE AND CLEAR  
OF CERTAIN LIENS, CLAIMS,  
INTERESTS AND ENCUMBRANCES; (2)  
APPROVING ASSUMPTION AND  
ASSIGNMENT OF UNEXPIRED LEASES  
AND EXECUTORY CONTRACTS AND  
DETERMINING CURE AMOUNTS, AND  
APPROVING REJECTION OF  
UNEXPIRED LEASES AND EXECUTORY  
CONTRACTS WHICH ARE NOT  
ASSUMED; (3) WAIVING THE 14-DAY  
STAY PERIODS OF BANKRUPTCY  
RULES 6004(h) AND 6006(d); AND (4)  
GRANTING RELATED RELIEF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

☒ Affects both Debtors

☐ Affects TRX Holdco, LLC only

☐ Affects Fitness Anywhere, LLC only

**Date:** August 18, 2022

**Time:** 10:00 a.m.

**Place:** \*Via ZoomGov

Courtroom 5C

411 West Fourth Street

Santa Ana, CA 92701

1 On August 18, 2022, at 10:00 a.m., the Court held a hearing (the “Sale Hearing”) to  
2 consider approval of the motion (“Sale Motion”) (Doc 205) filed by TRX Holdco, LLC (“Hold  
3 Co”) and Fitness Anywhere LLC, dba TRX and TRX Training (“Product Co” and together with  
4 Hold Co and Product Co, the “Debtors”), the debtors and debtors-in-possession in the above-  
5 captioned, jointly-administered Chapter 11 bankruptcy cases, seeking the entry of an order of the  
6 Court approving the Debtors’ sale of substantially all of their right, title and interest in and to the  
7 assets designated as purchased assets (the “Purchased Assets”) free and clear of all liens, claims,  
8 encumbrances and other interests (“Encumbrances”) other than as expressly set forth herein to  
9 the winning bidder and the winning back up bidder at the auction held on August 17, 2022  
10 (“Auction”), in accordance with the terms of an Asset Purchase Agreement (“APA”) to be  
11 negotiated and executed between the Debtors and the winning bidder (and between the Debtors  
12 and the winning backup bidder if the winning bidder fails to consummate its purchase of the  
13 Purchased Assets).

14 At a hearing held on July 20, 2022, the Court granted the Debtors’ amended bid  
15 procedures motion by entry of that certain *Order Granting Debtors’ Motion For Entry Of Order*  
16 *Modifying Bidding Procedures Previously Approved By The Court For Free And Clear Sale Of*  
17 *Assets And Granting Related Relief* (the “Bid Procedures Order”) (Doc 182) entered on July 20,  
18 2022. The Bid Procedures Order was consented to by the Debtors, Woodforest National Bank  
19 (“WNB”) and the Official Committee of Unsecured Creditors (“Committee”). The Bid  
20 Procedures Order set forth procedures with respect to how a prospective bidder could become  
21 qualified to participate in the Auction and how the Auction would proceed in the event there was  
22 more than one qualified bidder.

23 In accordance with the Bid Procedures Order, the Debtors conducted the Auction on  
24 August 17, 2022. Three qualified bidders besides WNB participated in the Auction, and WNB  
25 participated in the Auction as a qualified bidder with credit bidding rights as set forth in the Bid  
26 Procedures Order. JFXD Capital LLC, a Florida limited liability company (the “Winning  
27 Bidder”), was the winning bidder at the Auction with a cash purchase price of Eight Million Four  
28 Hundred Thousand Dollars (\$8,400,000.00) (the “Purchase Price”) to be funded in the manner

1 set forth in this Order. The Debtors, in consultation with WNB and the Committee, determined  
2 that the Purchase Price submitted by the Winning Bidder was the highest and best bid submitted  
3 at the Auction and should be approved by this Court.

4 The Debtors determined, in consultation with WNB and the Committee that Thor-TRX,  
5 LLC, a Delaware limited liability company (the “Winning Back-Up Bidder”), which submitted a  
6 cash offer in the amount of Eight Million Three Hundred Thousand Dollars (\$8,300,000.00)  
7 submitted the second highest and best bid at the Auction and was designated the Winning Back-  
8 Up Bidder in accordance with the terms of the Bid Procedures Order.

9 The Court, having considered the: (1) Sale Motion; (2) *Declaration Of Brent Leffel* (Doc  
10 206) filed in support of the Sale Motion; (3) *Declaration Of Joshua K. Benn* (Doc 207) filed in  
11 support of the Sale Motion, (4) *Declaration of Mark Reis* (Doc 211) filed in support of the Sale  
12 Motion, (5) *Notice of Hearing* (“Sale Notice”) (Doc 209) on the Sale Motion; (6) *Notice of Sale*  
13 *Of Estate Property* (Doc 208), (7) *Notice Of: (1) Assumption And Assignment Of Executory*  
14 *Contracts And Unexpired Leases; (2) Establishment Of Cure Amount In Connection Therewith;*  
15 *(3) Procedures And Deadlines Regarding Oppositions To Assumption And Assignment, And*  
16 *Cure Amounts; And (4) Hearing Thereon* (the “Assumption/Assignment And Cure Notice”)  
17 (Doc 213), (8) all other pleadings and papers filed in support of the Sale Motion, (9) *Limited*  
18 *Opposition To Debtors’ Motion To Approve Sale Of Substantially All Assets* (Doc 238), *Limited*  
19 *Opposition* (Doc 239) to the Assumption/Assignment And Cure Notice, and *Supplemental*  
20 *Declaration Of Brian Ausmus* (Doc 262) (collectively, the “TMA Opposition”) filed by TMA  
21 Worldwide, Inc. (“TMA”); (10) the *Limited Objection And Reservation Of Rights* (the “Oracle  
22 Opposition”) (Doc 242) filed by Oracle America, Inc. (“Oracle”); and (11) *Omnibus Reply* (Doc  
23 257) filed by the Debtors to the TMA Opposition and Oracle Opposition; and the statements,  
24 arguments and representations of the parties made at the Sale Hearing; and the entire record of  
25 these cases; and the Court, having determined that the relief sought in the Sale Motion is in the best  
26 interests of the Debtors and their estates, and that the legal and factual bases set forth in the Sale  
27 Motion and presented at the Sale Hearing establish just cause for the relief granted herein; and all  
28 objections to the Sale Motion, if any, having been withdrawn or overruled; and after due

1 deliberation and sufficient good cause appearing therefor,

2 **THE COURT HEREBY FINDS AND CONCLUDES THAT:**

3 A. Findings and Conclusions. The findings and conclusions set forth herein  
4 constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052,  
5 made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

6 B. Jurisdiction and Venue. The Bankruptcy Court has jurisdiction to hear and  
7 determine the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the  
8 administration of the Debtors' bankruptcy estates and is accordingly a core proceeding pursuant  
9 to 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O). Venue of these cases is proper in this District  
10 and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

11 C. Statutory Predicates. The statutory predicates for the relief requested in the Sale  
12 Motion are (i) Sections 105(a) and 363(b), (f), (k), (l) and (m), 365 of Title 11 of the United  
13 States Code (the "Bankruptcy Code"), (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b),  
14 (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014 of the Federal Rules of  
15 Bankruptcy Procedure (the "Bankruptcy Rules"), and (iii) Local Bankruptcy Local Rules 6004-1  
16 and 9013-1.

17 D. Notice. The Debtors have provided good and sufficient notice with respect to the  
18 following: (i) the Sale Motion and the relief sought therein, including the entry of this Order and  
19 the transfer and purchase of the Purchased Assets; (ii) the Auction and the Sale Hearing; (iii) the  
20 selection of the Winning Bidder and the Winning Back-up Bidder; (iv) the assumption and  
21 assignment of executory contracts and unexpired leases and proposed cure amounts owing under  
22 such executory contracts and unexpired leases ("Cure Amounts"). No further notice of the Sale  
23 Motion, the relief requested therein or the Sale Hearing is required. The *Notice Of Court-*  
24 *Approved Amended Bidding Procedures, Opportunity To Bid On Assets And Auction Schedule*  
25 (the "Bidding Procedures And Auction Notice") (Doc 181), the Sale Notice, the  
26 Assumption/Assignment And Cure Notice, and the notice provided by the Debtors of the Cure  
27 Costs, the Auction, and the hearing to approve the sale of the Purchased Assets were in  
28 accordance with the Bid Procedures Order, and were appropriate and reasonable and calculated

1 to provide all interested parties with timely and proper notice and no other or further notice is  
2 required. Such notice was proper under the Bankruptcy Code, Bankruptcy Rules and Local  
3 Rules. A reasonable opportunity to object and to be heard regarding the relief provided herein  
4 has been afforded to all parties-in-interest.

5 E. Compliance with the Bid Procedures Order. The sale process and Auction were  
6 conducted in accordance with and otherwise in compliance with the Bid Procedures Order and  
7 were fair, proper and reasonably calculated to result in the best value received for the Purchased  
8 Assets. The Auction process afforded a full, fair and reasonable opportunity for any party to  
9 become a qualified bidder and to participate in the Auction. As demonstrated on the record at  
10 the Sale Hearing, the Debtors have conducted the Auction process in good faith, without  
11 collusion and in accordance with the Bid Procedures Order.

12 F. Highest and Best Bid. The bid of the Winning Bidder constitutes the highest or  
13 otherwise best offer for the Purchased Assets, and will provide a greater recovery for the  
14 Debtors' estates than would be provided by any other available alternative. The Debtors'  
15 determination that the Winning Bidder made the highest or otherwise best offer for the  
16 Purchased Assets constitutes a reasonable, valid and sound exercise of the Debtors' business  
17 judgment, and is in the best interests of the Debtors and their estates. The consideration to be  
18 paid by the Winning Bidder for the Purchased Assets is fair and reasonable, is the highest or  
19 otherwise best offer therefor, and constitutes reasonably equivalent value and fair consideration  
20 under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent  
21 Transfer Act, and the laws of the United States. The Winning Back-Up Bidder made the second  
22 highest and best offer for the Purchased Assets.<sup>1</sup>

23 G. Arm's Length Transaction. The sale of the Purchased Assets to the Winning  
24 Bidder (the "Transaction") [substantially in conformance with the terms of the APA filed as  
25 Docket No. 277] and the consummation thereof were negotiated and entered into by the Debtors  
26 and the Winning Bidder without collusion, in good faith and through an arms' length bargaining

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27 <sup>1</sup> This Order may be appropriately revised by subsequent order if the back-up bidder is the  
28 ultimate buyer pursuant to the terms of the Back-Up APA.

1 process. None of the Debtors, the Winning Bidder, or their respective representatives engaged in  
2 any conduct that would cause or permit the Transaction to be avoided under section 363(n) of the  
3 Bankruptcy Code, or have acted in any improper or collusive manner. The terms and conditions  
4 of the Transaction, including, without limitation, the consideration provided in respect thereof,  
5 are fair and reasonable, and are not avoidable and shall not be avoided, and no damages may be  
6 assessed against the Winning Bidder or any other party, as set forth in section 363(n) of the  
7 Bankruptcy Code.

8 H. Good Faith Purchaser. The Winning Bidder has proceeded in good faith and  
9 without collusion in all respects in connection with the sale process, and is therefore entitled to  
10 all of the benefits and protections provided to a good-faith purchaser under section 363(m) of the  
11 Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization  
12 provided herein to consummate the Transaction shall not affect the validity of the Transaction or  
13 the Winning Bidder's status as a "good faith" purchaser.

14 I. No Successor Liability. The Winning Bidder is not a successor to the Debtors or  
15 their bankruptcy estates nor shall be deemed to be a mere continuation of any of the Debtors'  
16 operations by any reason or theory of law or equity, and the Winning Bidder shall not be subject  
17 to successor liability for any assets sold or claims that arose or could have been asserted prior to  
18 the closing of the Transaction (the "Closing").

19 J. Authority to Consummate the Sale of the Purchased Assets. The Debtors have  
20 full corporate power and authority to execute the APA (including all ancillary documents  
21 executed in connection therewith), and the sale of the Purchased Assets have been duly and  
22 validly authorized by all necessary corporate authority by the Debtors to consummate the sale of  
23 the Purchased Assets to the Winning Bidder. No consents or approvals, other than as may be  
24 expressly provided for in the APA, are required by the Debtors to consummate such sale of the  
25 Purchased Assets.

26 K. Justification for Relief. Good and sufficient reasons for approval of the  
27 Transaction have been articulated to the Bankruptcy Court in the Sale Motion and at the Sale  
28 Hearing, and the relief requested in the Sale Motion and set forth in this Order is in the best

1 interests of the Debtors and their estates. The Debtors have demonstrated through the Sale  
2 Motion and other evidence submitted by the Debtors both (i) good, sufficient and sound business  
3 purpose and justification and (ii) compelling circumstances for the transfer and sale of the  
4 Purchased Assets outside the ordinary course of business, and such action is an appropriate  
5 exercise of the Debtors' business judgment and in the best interests of the Debtors and their  
6 estates.

7 L. Free and Clear. In accordance with sections 363(b) and 363(f) of the Bankruptcy  
8 Code, the consummation of the Transaction pursuant to the Transaction Documents will be a  
9 legal, valid, and effective transfer and sale of the Purchased Assets and will vest in the Winning  
10 Bidder, all of the Debtors' right, title, and interest in and to the Purchased Assets, free and clear  
11 of all Encumbrances, subject to the provisions of Paragraph 6 below. The Debtors have  
12 demonstrated that one or more of the standards set forth in section 363(f)(1)-(5) of the  
13 Bankruptcy Code have been satisfied. As set forth in Paragraph 6 below, the Purchased Assets  
14 shall be transferred to the Winning Bidder at the Closing subject to all valid, perfected and  
15 enforceable possessory liens ("Possessory Liens"), with the ones being held by TMA  
16 Worldwide, Flexport, Sunrise Nationwide, McCollister's, USA - FH Fitness Anywhere (USA  
17 Global Logistics LLC) constituting the only Possessory Liens that the Debtors are aware of  
18 (collectively, the "Possessory Lienholders").

19 M. Prompt Consummation. The Debtors have demonstrated good and sufficient  
20 cause to waive the stay requirement under Bankruptcy Rules 6004(h) and 6006(d). Time is of  
21 the essence in consummating the Transaction, and it is in the best interests of the Debtors and  
22 their estates to consummate the Transaction within the timeline set forth in the Sale Motion and  
23 the Bid Procedures Order, which provide for the Closing to occur by August 26, 2022 unless the  
24 Winning Bidder and the Debtors mutually agree to an extension of that date.

25 N. Assumption of Executory Contracts and Unexpired Leases. The Debtors have  
26 demonstrated that it is an exercise of their sound business judgment to assume and assign,  
27 subject to the provisions hereof, to the Winning Bidder those executory contracts and unexpired  
28 leases designated by the Winning Bidder either prior to the Closing or during the Designation

1 Rights Period (as defined in Paragraph 18 below) (the “Assigned Contracts”) in connection with  
2 the consummation of the Transaction, and the Debtors’ assumption and assignment to the  
3 Winning Bidder of the Assigned Contracts is in the best interests of the Debtors and their estates.

4 O. Cure/Adequate Assurance. Through the payments to be made by the Winning  
5 Bidder at the Closing or prior to the expiration of the Designation Rights Period (as defined in  
6 Paragraph 18 below), as the case may be, the Winning Bidder will have cured, or will have  
7 provided adequate assurance of cure, of any default existing under any of the Assigned  
8 Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(A), by payment of the amounts and in  
9 the manner set forth below. The Winning Bidder has provided or will provide adequate  
10 assurance of future performance of and under the Assigned Contracts within the meaning of 11  
11 U.S.C. § 365(b)(1)(C). Pursuant to 11 U.S.C. § 365(f), the Assigned Contracts to be assumed by  
12 the Debtors and assigned to the Winning Bidder under the APA shall be assigned and transferred  
13 to, and remain in full force and effect for the benefit of, the Winning Bidder notwithstanding any  
14 provision in any such Assigned Contract prohibiting their assignment or transfer. The Debtors  
15 have demonstrated that no other parties to any of the Assigned Contracts have incurred any  
16 actual pecuniary loss resulting from a default prior to the Closing under any of the Assigned  
17 Contracts within the meaning of 11 U.S.C. § 365(b)(1)(B). Pursuant to 11 U.S.C. § 365(f), the  
18 Assigned Contracts to be assumed by the Debtors and assigned to the Winning Bidder shall be  
19 assigned and transferred to, and remain in full force and effect for the benefit of, the Winning  
20 Bidder notwithstanding any provision in such contracts or other restrictions prohibiting their  
21 assignment or transfer. Notwithstanding the foregoing, any executory contracts or unexpired  
22 leases of Oracle or TMA shall not be deemed Assigned Contracts absent the consent of Oracle or  
23 TMA, respectively, or a further order of this Court.

24 P. Rejection of Executory Contracts and Unexpired Leases. The Debtors have  
25 demonstrated that it is an exercise of their sound business judgment to reject all of their  
26 executory contracts and unexpired leases which are not part of the Assigned Contracts effective  
27 as of the Closing, subject only to that set forth in Paragraphs 18 and 19 below.



1 Q. Legal and Factual Basis. The legal and factual bases set forth in the Sale Motion  
2 and at the Sale Hearing establish just cause for the relief granted herein.

3 R. Findings and Conclusions. To the extent any of the foregoing findings of fact  
4 constitute conclusions of law, they are adopted as such.

5 **IT IS HEREBY ORDERED AS FOLLOWS:**

6 1. The Sale Motion is **GRANTED** as set forth herein. The sale of the Purchased  
7 Assets to the Winning Bidder is approved upon the terms and conditions described at the  
8 Auction and on the Court's record at the Sale Hearing and as set forth in the APA.

9 2. The Debtors are authorized to enter into the APA and to consummate the sale of  
10 the Purchased Assets to the Winning Bidder in accordance with this Order. The final version of  
11 the APA is subject to the approval of the Debtors, the Winning Bidder and the Bank, with the  
12 Bankruptcy Court to be the arbiter to resolve any outstanding disputes.

13 3. All objections and responses to the Sale Motion that have not previously been  
14 overruled, withdrawn, waived, settled or resolved, and all reservations of rights included therein,  
15 are hereby overruled and denied, provided, however that the TMA Opposition and the Oracle  
16 Opposition are deemed resolved as otherwise set forth in this Order.

17 4. The Winning Bidder's offer for the Purchased Assets is the highest and best offer  
18 for the Purchaser Assets and is hereby approved.

19 5. Pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code, the  
20 Transaction, including the transfer and sale of the Purchased Assets to the Winning Bidder is  
21 approved in all respects, and the Debtors are authorized and directed to consummate the Transaction  
22 and enter into the APA, including, without limitation, by executing any Transaction Documents and  
23 taking all actions necessary and appropriate to effectuate and consummate the Transaction (including  
24 the transfer and sale of the Purchased Assets) in consideration of the Purchase Price, including,  
25 without limitation, providing to the Winning Bidder the Designation Rights Assets (as defined in the  
26 APA) and assuming and assigning to the Winning Bidder the Assigned Contracts. The Debtors and  
27 the Winning Bidder shall have the right to make any mutually agreeable, non-material changes to the  
28 APA which shall be in writing signed by both parties without further order of the Court.

1           6.       The conditions of section 363(f) of the Bankruptcy Code have been satisfied in  
2 full, provided, however, that any holders of Possessory Liens against any of the Purchased  
3 Assets by the Possessory Lienholders shall retain such Possessory Liens with such Possessory  
4 Liens having the same validity (or invalidity), priority and extent as such Possessory Liens had  
5 as of the date of the Closing, and, subject to Paragraph 18 below, the Debtors' sale of any  
6 Purchased Assets which are encumbered by any such Possessory Liens shall be subject to all  
7 such Possessory Liens. For the avoidance of doubt, any possessory liens of TMA shall remain in  
8 full force and effect. Notwithstanding anything to the contrary contained herein, in the event that  
9 the Winning Bidder cannot obtain a satisfactory release of the Possessory Liens, the Winning  
10 Bidder shall not be obligated to take title to the Purchased Assets subject to such Possessory  
11 Liens and shall have no obligation, responsibility or liability associated with such assets.

12           7.       Pursuant to sections 105, 363(b), 363(f) and 363(m) of the Bankruptcy Code, and  
13 subject to Paragraph 6 of this Order, the Purchased Assets shall be sold and transferred free and  
14 clear of all Encumbrances, except as otherwise provided in the APA, with any and all such  
15 Encumbrances to attach to proceeds of the sale with the same validity (or invalidity), priority,  
16 force and effect such Encumbrances had on the Purchased Assets immediately prior to the  
17 Closing and subject to the rights, claims, defenses, and objections, if any, of the Debtors and all  
18 interested parties with respect to any such asserted Encumbrances.

19           8.       As of the Closing, (i) the Transaction shall effect a legal, valid, enforceable and  
20 effective transfer and sale of the Purchased Assets to the Winning Bidder free and clear of all  
21 Encumbrances except for Possessory Liens, as set forth in the APA and Paragraph 6 of this Order; and  
22 (ii) the APA, the Transaction and the other Transaction Documents shall be enforceable against and  
23 binding upon, and not subject to rejection or avoidance by, any successor thereto including a trustee or  
24 estate representative appointed in these cases, and all other persons and entities.

25           9.       For the avoidance of doubt, the Purchased Assets do not include any avoidance actions  
26 under chapter 5 of the Bankruptcy Code or any claims, causes of action, choses of action, rights of  
27 recovery (whether choate or inchoate, known or unknown, contingent or non-contingent), either direct  
28 or derivative, including those that would expressly inure to the benefit of the creditors in these

1 bankruptcy cases, including claims made against any former or current insiders, affiliates, officers or  
2 directors, and to the extent applicable, insurance recoveries related in any way to such claims.

3 10. This Order shall, as of the Closing, be considered and constitute for all purposes a full  
4 and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill of  
5 sale transferring all of the Debtors' rights, title and interest in and to the Purchased Assets to the  
6 Winning Bidder. Consistent with, but not in limitation of the foregoing, each and every federal, state,  
7 and local governmental agency or department is hereby authorized and directed to accept all  
8 documents and instruments necessary and appropriate to consummate the transactions contemplated  
9 by the APA and approved in this Order.

10 11. The Winning Bidder shall not be deemed, as a result of any action taken in connection  
11 with, or as a result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i)  
12 be a successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their  
13 estates by reason of any theory of law or equity, including, without limitation, any bulk sales law,  
14 doctrine or theory of successor liability, or similar theory or basis of liability; or (ii) have, de facto or  
15 otherwise, merged with or into the Debtors; or (iii) be a mere continuation, alter ego, or substantial  
16 continuation of the Debtors, and other than as expressly set forth in the APA, the Winning Bidder  
17 shall have no liability whatsoever for any conduct, action or inaction of the Debtors or with respect to  
18 the Purchased Assets that arose prior to the Closing.

19 12. This Order (i) shall be effective as a determination that, except as expressly set forth in  
20 this Order or the APA, effective as of the Closing, all Encumbrances existing against the Purchased  
21 Assets before the Closing (with the exception of Possessory Liens as set forth in Paragraph 6 hereof)  
22 have been unconditionally released, discharged and terminated, and that the transfers and conveyances  
23 described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all  
24 persons and entities. If any person or entity that has filed financing statements or other documents or  
25 agreements evidencing any Encumbrances against the Purchased Assets (with the exception of  
26 Possessory Liens as set forth in Paragraph 6) shall not have delivered to the Debtors before the  
27 closing, in proper form for filing and executed by the appropriate parties, termination statements,  
28 instruments of satisfaction, releases of all Encumbrances which the person or entity has with respect to

1 the Purchased Assets, then the Winning Bidder is hereby authorized to execute and file such  
2 statements, instruments, releases and other documents on behalf of the person or entity with respect to  
3 such Purchased Assets.

4 13. The sale of the Purchased Assets is not subject to avoidance by any person or for any  
5 reason whatsoever, including, without limitation, pursuant to section 363(n) of the Bankruptcy Code  
6 and the Buyer shall not be subject to damages, including any costs, fees, or expenses under section  
7 363(n) of the Bankruptcy Code.

8 14. Subject to Paragraph 6, all entities that are presently, or on the Closing may be, in  
9 possession of some or all of the Purchased Assets to be sold, transferred, or conveyed (wherever  
10 located) to the Buyer pursuant to this Sale Order and the APA are hereby directed to surrender  
11 possession of the Assets to the Buyer on the Closing Date.

12 15. The Winning Bidder shall fund the payment of the Purchase Price at the Closing by (i)  
13 transferring to WNB pursuant to payment instructions provided by WNB to the Winning Bidder the  
14 cash amount of Six Million Four Hundred Thousand Dollars (\$6,400,000.00) (the “WNB  
15 Payment”) which WNB Payment shall be applied by WNB to WNB’s claims against the  
16 Debtors; and (ii) by title to the Two Million Dollar (\$2,000,000.00) deposit that the Winning  
17 Bidder previously provided to the Debtors’ bankruptcy counsel, Levene, Neale, Bender, Yoo &  
18 Golubchik L.L.P. (the “Winning Bidder Deposit”), transferring to the Debtors, which cash  
19 remains subject to WNB’s valid and perfected liens subject only to the Carve Outs set forth  
20 below. Levene, Neale, Bender, Yoo & Golubchik L.L.P. (“LNBYG”) shall distribute the  
21 Winning Bidder Deposit in the manner set forth in Paragraph 16 below.

22 16. Pursuant to and in accordance with the terms of that certain *Stipulation Regarding (1)*  
23 *Professional Fee And Creditor Carve Outs And (2) Lien Validations, Releases And Surcharge*  
24 *Waivers* (the “Carve Out Stipulation”) (Doc 195) approved by order of this Court entered on August  
25 8, 2022 (Doc 253):

26 a. LNBYG is hereby authorized and directed to continue to maintain \$400,000 of  
27 the Winning Bidder Deposit in a trust account maintained by LNBYG as the initial Carve Out  
28 for the sole benefit of LNBYG, Kroll, LLC and Michael Zuercher/Law Office of Michael A.

1 Zuercher, Inc., with such professionals to be authorized to be paid their respective portion of  
2 this \$400,000 only after such professionals have had their fees and expenses approved by the  
3 Court following notice and a hearing;

4 b. LNBYG is hereby authorized and directed to pay to Kroll Securities, LLC  
5 from the Winning Bidder Deposit the sum of \$336,000 as Kroll Securities, LLC's allowed and  
6 earned investment banking fee;

7 c. LNBYG is hereby authorized and directed to pay to Duane Morris LLP  
8 ("DM") from the Winning Bidder Deposit the sum of \$65,000, which Carve Out shall be paid  
9 to DM for the sole benefit of DM into a trust account maintained by DM and may be paid to  
10 DM only after DM has had its fees and expenses approved by the Court following notice and  
11 a hearing;

12 d. LNBYG is hereby authorized and directed to pay to Sheppard Mullin LLP  
13 ("SM") from the Winning Bidder Deposit the initial Carve Out in the sum of \$100,000 (the  
14 "SM Carve Out Amount"), which shall be used solely to pay the allowed fees and expenses of  
15 SM and which shall be paid directly into a trust account maintained by SM for the sole benefit  
16 of SM, but no portion of the SM Carve Out Amount may be paid to SM until SM has had its  
17 fees and expenses approved by the Court following notice and a hearing; and

18 e. LNBYG is hereby authorized and directed to immediately pay the \$1,099,000  
19 balance of the Winning Bidder Deposit to WNB in the manner directed by WNB in writing to  
20 LNBYG.

21 17. Nothing set forth in this Order shall impact the rights of the parties to the Carve  
22 Out Stipulation, all of which are expressly reserved, and neither this Order nor the Purchase  
23 Price amount set forth in this Order shall limit or expand the rights of the parties to the Carve  
24 Out Stipulation.

25 18. Subject to the provisions hereof, all executory contracts and unexpired leases  
26 designated by the Winning Bidder prior to the Closing to be assumed and assigned by the  
27 Debtors to the Winning Bidder shall be deemed assumed by the Debtors and assigned to the  
28 Winning Bidder effective as of the date of the Closing (the "Closing Date"). All executory

1 contracts and unexpired leases designated by the Winning Bidder prior to the Closing to be  
2 rejected by the Debtors shall be deemed rejected by the Debtors effective as of the Closing Date.  
3 The Winning Bidder shall have the right, by written notice to the Debtors no later than one (1)  
4 day prior to the Closing Date, to specify that any executory contract and/or unexpired lease that  
5 is not an Excluded Asset (other than with respect to any employment contract which must be  
6 assumed and assigned to the Winning Bidder or rejected by the Debtors effective as of the  
7 Closing Date), under the APA is not to be assumed or rejected as of the Closing Date (the  
8 “Designated Contracts”), in which case the Winning Bidder shall be entitled to make its  
9 determination as to whether it wants to take an assignment of any such Designated Contracts for  
10 a period commenced with the day after the Closing Date and continuing until September 27,  
11 2022 (the “Designation Rights Period”). The Winning Bidder shall be financially responsible  
12 for, and shall timely pay for, all costs, expenses and obligations arising under the Designated  
13 Contracts during the Designation Rights Period until such time that the Court enters an order  
14 providing for the Debtors’ assumption and assignment to the Winning Bidder or the Debtors’  
15 rejection of such Designated Contracts in accordance with the procedure set forth in Paragraph  
16 19 below. The Winning Bidder shall have the right to determine that any asset that is the subject  
17 to any Possessory Lien shall be part of the Excluded Assets, rather than be part of the Purchased  
18 Assets subject to such Possessory Lien.

19 19. The Winning Bidder has the right to provide LNBYG with written notice at any  
20 time during the Designation Rights Period of the Winning Bidder’s determination to take an  
21 assignment of or to effectuate a rejection of any Designated Contracts. Following LNBYG’s  
22 receipt of any such written notice from the Winning Bidder, LNBYG shall file with the Court  
23 and serve on the affected counter party a summary notice of the Winning Bidder’s determination  
24 together with a proposed order providing for such assumption and assignment or rejection  
25 effective as of the Closing Date. Subject to the provisions hereof, the Designated Contracts shall  
26 be deemed to have been assumed and assigned to the Winning Bidder or be deemed rejected, as  
27 the case may be, effective as of the Closing Date. All Designated Contracts for which the  
28 Winning Bidder has not provided written notice to LNBYG during the Designation Rights

1 Period shall be automatically deemed rejected effective as of the Closing Date. All of the  
2 Debtors' executory contracts and unexpired leases that have not previously been rejected and  
3 that are not assumed and assigned by the Debtors to the Winning Bidder prior to the expiration  
4 of the Designation Rights Period will be automatically deemed rejected effective as of the  
5 Closing Date without the need for any further order of the Court.

6 20. The Winning Bidder's designation of any executory contract or unexpired lease  
7 prior to or at the Closing, or during the Designation Rights Period in the manner set forth herein,  
8 as an Assigned Contract shall be deemed to constitute an assumption and assignment of such  
9 Assigned Contract to the Winning Bidder without further order of this Court provided that the  
10 Winning Bidder pays (which payment(s) shall be in addition to the Purchase Price) in connection  
11 with such assumption and assignment the Cure Amount for such Assigned Contract, and the  
12 Winning Bidder shall have assumed all obligations owing under all such Assigned Contracts  
13 following the Closing Date. The payment of the Cure Amounts in the amounts set forth in the  
14 Assumption/Assignment and Cure Notice in connection with the assumption and assignment of  
15 the Assigned Contracts is hereby deemed the necessary and sufficient amounts to "cure" all  
16 "defaults" with respect to all such Assigned Contracts under section 365(b) of the Bankruptcy Code.  
17 The payment by the Winning Bidder of such Cure Amounts to the corresponding counterparties to  
18 such Assigned Contracts shall (i) effect a cure of all defaults existing under all such Assigned  
19 Contracts, and (ii) compensate all such counterparties to the Assigned Contracts for any actual  
20 pecuniary loss resulting from any such default. With the payment by the Winning Bidder of the  
21 Cure Amounts set forth in the Assumption/Assignment And Cure Notice: (i) the Debtors and the  
22 Winning Bidder are hereby deemed to have cured, or have provided adequate assurance of cure,  
23 of any default existing or occurring prior to the Closing under any of the assumed and assigned  
24 contracts and leases, and the Winning Bidder has provided adequate assurance of its future  
25 performance of and under the assumed and assigned contracts and leases, (ii) the provisions of  
26 Section 365(b)(1)(A) of the Bankruptcy Code at the Cure Amounts set forth in the  
27 Assumption/Assignment And Cure Notice are hereby deemed satisfied, and (iii) it is hereby  
28 deemed that none of the other parties to the executory contracts and unexpired leases have

1 suffered any actual pecuniary loss resulting from any default by the Debtors so that no further  
2 payments beyond the proposed Cure Amounts are required to enable compliance with the  
3 provisions of Section 365(b)(1)(B) of the Bankruptcy Code. The Debtors shall then have assumed  
4 and assigned to the Winning Bidder all of the Assigned Contracts, and, pursuant to section 365(f) of  
5 the Bankruptcy Code, the assignment by the Debtors of all such Assigned Contracts to the Winning  
6 Bidder shall not be a default thereunder. After the payment of the Cure Amounts by the Winning  
7 Bidder to the counterparties to the Assigned Contracts, neither the Debtors nor the Winning Bidder  
8 shall have any further liabilities to any counterparties to the Assigned Contracts other than the  
9 Winning Bidder's obligations under the Assigned Contracts that accrue and become due and payable  
10 on or after the Closing Date. In addition, adequate assurance of future performance has been  
11 demonstrated by or on behalf of the Winning Bidder with respect to all of the Assigned Contracts  
12 within the meaning of sections 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of  
13 the Bankruptcy Code. Notwithstanding any of the foregoing, any executory contracts or  
14 unexpired leases of Oracle or TMA shall not be deemed Assigned Contracts and the respective  
15 Cure Amounts for Oracle or TMA set forth in the Assumption/Assignment and Cure Notice shall  
16 not be deemed to bind Oracle or TMA under this Order, except by mutual agreement between  
17 the Winning Bidder and Oracle and/or TMA, respectively, or further order of the Court.

18 21. All of the counterparties to the Assigned Contracts are forever barred, estopped, and  
19 permanently enjoined from raising or asserting against the Debtors or the Winning Bidder, or any of  
20 their property, any assignment fee, acceleration, default, breach, or claim of pecuniary loss, or  
21 condition to assignment, arising under or related to the Assigned Contracts, existing as of the Closing,  
22 or arising by reason of the consummation of the Transaction, including, without limitation, the  
23 Transaction and the assumption and assignment of the Assigned Contracts, including any asserted  
24 breach relating to or arising out of the change-in-control provisions in such Assigned Contracts, or any  
25 purported written or oral modification to the Assigned Contracts.

26 22. Any provisions in any Assigned Contract that prohibits or conditions the assignment  
27 of such Assigned Contract or allow the counterparty to such Assigned Contract to terminate,  
28 recapture, impose any penalty, condition on renewal or extension or modify any term or condition



1 upon the assignment of such Assigned Contract constitutes unenforceable anti-assignment provisions  
2 that are void and of no force and effect with respect to the Debtors' assumption and assignment of  
3 such Assigned Contract to the Winning Bidder.

4 23. In connection with the Debtors' assumption and assignment to the Winning  
5 Bidder of Assigned Contracts on the Closing Date, the Winning Bidder shall pay all Cure  
6 Amounts on or before the Closing Date. With respect to each of the Assigned Contracts assigned  
7 to the Winning Bidder during the Designation Rights Period, the Winning Bidder shall pay all  
8 Cure Amounts concurrently with providing the Winning Bidder Assumption Notice.

9 24. The Winning Back-Up bidder is hereby approved as the back-up bidder with a  
10 back-up bid of Eight Million Three Hundred Thousand Dollars (\$8,300,000.00) (the "Back-Up  
11 Purchase Price"). If the Winning Bidder is obligated to close the Transaction under the terms of  
12 the APA but fails to close the Transaction in accordance with the terms and timing of the APA,  
13 the Winning Bidder shall be deemed to have forfeited the Winning Bidder Deposit to the  
14 Debtors' bankruptcy estates as liquidated damages, with the Court to resolve any dispute in this  
15 regard between the Debtors and the Winning Bidder. LNBYG shall continue to hold the Two  
16 Million Dollar deposit provided to LNBYG by the Winning Back-Up Bidder (the "Winning  
17 Back-Up Bidder Deposit"). Only if the Winning Bidder fails to close the Transaction in  
18 accordance with the terms and timing of the APA, the sale of the Purchased Assets to the  
19 Winning Back-Up Bidder (the "Back-Up Transaction") pursuant to the terms of an asset  
20 purchase agreement between the Debtors and the Winning Back-Up Bidder (the "Back-Up  
21 APA") shall be deemed authorized and approved by this Order. The Debtors shall forthwith  
22 provide written notice to the Winning Back-Up Bidder (by email to the Winning Back-Up  
23 Bidder and its counsel) of such failure to close by the Winning Bidder (the "Back-Up Bidder  
24 Notice"). The Back-Up Transaction contemplated by the Back-Up APA and other Back-Up  
25 Transaction Documents between the Debtors and the Winning Back-Up Bidder are deemed by the  
26 Court to have been undertaken without collusion and in "good faith," as that term is defined in section  
27 363(m) of the Bankruptcy Code. The Back-Up Bidder is a good faith purchaser within the meaning  
28 of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section

363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein by this Order to consummate the Back-Up Transaction shall not affect the validity of the sale of the Purchased Assets to the Winning Back-Up Bidder. Only in the event that the Winning Bidder fails to close the Transaction in accordance with the terms and timing of the APA, all findings and terms of this Order that apply to the Winning Bidder shall be deemed to apply to the Winning Back-Up Bidder, and all findings and terms of this Order that apply to the APA or to the Transaction shall be deemed to apply to the Back-Up APA and the Back-Up Transaction respectively, without the need for any further order of the Court. LNBYG will refund the Back-Up Deposit to the Winning Back-Up within three (3) business days following the Closing with the Winning Bidder. Upon the Debtors' delivery of the Back-Up Bidder Notice to the Winning Back-Up Bidder, the Back-Up Deposit shall be applied to the Back-Up Purchase Price to be paid by the Winning Back-Up Bidder, or forfeited to the Debtors as liquidated damages in the event that the Winning Back-Up Bidder fails to close the Back-Up Transaction in accordance with the terms and timing of the Back-Up APA. All protections and rights afforded to the Winning Bidder in and throughout this Order shall apply equally to the Winning Back Up Bidder in the event the Winning Back Up Bidder is authorized to close. In such instance the Debtors and the Winning Back Up Bidder shall file an amended Sale Order reflecting the Winning Back Up Bidder as the purchaser.

25. Within three (3) business days of the entry of this Order, LNBYG shall return to bidders other than the Winning Bidder and the Winning Back-Up Bidder (the "Withdrawn Bidders") the deposits provided by such Withdrawn Bidders to LNBYG.

26. The terms and provisions of this Order, as well as the rights granted under the Transaction Documents, shall continue in full force and effect and are binding upon any successor to the Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding any such conversion, dismissal or order entry. Nothing contained in any chapter 11 plan confirmed in these cases or in any order confirming such a plan, nor any order dismissing these cases or converting these cases to a case under chapter 7 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the APA, any documents or instruments executed in connection therewith, or the terms

1 of this Order. The provisions of this Order and any actions taken pursuant hereto shall survive any  
2 conversion or dismissal of these cases and the entry of any other order that may be entered in these  
3 cases, including any order (i) confirming any plan of reorganization; (ii) converting these cases from  
4 chapter 11 to chapter 7; (iii) appointing a trustee or examiner in the cases; including for the  
5 avoidance of doubt a liquidating trustee appointed for the purpose of administering any remaining  
6 estate assets for the benefit of the estates' creditors; or (iv) dismissing these cases.

7 27. The Transaction and other Transaction Documents are undertaken without collusion  
8 and in "good faith," as that term is defined in section 363(m) of the Bankruptcy Code. The Winning  
9 Bidder is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as  
10 such, is entitled to the full protections of section 363(m) of the Bankruptcy Code. Accordingly, the  
11 reversal or modification on appeal of the authorization provided herein by this Order to consummate  
12 the Transaction shall not affect the validity of the sale of the Purchased Assets to the Winning Bidder.

13 28. The failure to specifically include any particular provision of the APA or the other  
14 Transaction Documents in this Order shall not diminish or impair the effectiveness of such provisions,  
15 it being the intent of this Court that the Transaction, the APA and the other Transaction Documents be  
16 authorized and approved in their entirety. Likewise, all of the provisions of this Order are non-  
17 severable and mutually dependent.

18 29. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or  
19 any other Local Bankruptcy Rule or otherwise, this Order shall not be stayed for 14-days after the  
20 entry hereof, but shall be effective and enforceable immediately upon entry pursuant to Bankruptcy  
21 Rule 6004(h) and 6006(d). Time is of the essence in approving the Transaction (including the transfer  
22 and the sale of the Purchased Assets).

23 30. The automatic stay pursuant to section 362 is hereby lifted with respect to the Debtors  
24 to the extent necessary, without further order of this Court, for the Debtors and the Winning Bidder to  
25 take any and all actions permitted under the APA and the Transaction Documents in accordance with  
26 the terms and conditions thereof.

1           31. After the Closing, the Winning Bidder specifically agrees that the Debtors and any  
2 trustee or successor in interest appointed in these cases shall have continuing reasonable access to the  
3 Debtors' books and records as set forth in Section 6.1 of the APA.


4           32. Unless otherwise provided in this Order, to the extent any inconsistency exists  
5 between the provisions of the APA and this Order, the provisions contained in this Order shall govern.

6           33. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the  
7 provisions of the APA and this Order in all respects, and further, including, without limitation, to (i)  
8 hear and determine all disputes between the Debtors and/or the Winning Bidder, as the case may be,  
9 and any other non-Debtor party to, among other things, the Assigned Contracts concerning, among  
10 other things, assignment thereof by the Debtors to the Winning Bidder and any dispute between the  
11 Winning Bidder and the Debtors as to their respective obligations with respect to any asset, liability,  
12 or claim arising hereunder; (ii) compel delivery of the Purchased Assets to the Winning Bidder free  
13 and clear of Encumbrances except for the Possessory Liens; (iii) compel the delivery of the Purchase  
14 Price or performance of other obligations owed to the Debtors; and (iv) interpret, implement, and  
15 enforce the provisions of this Order.

16 IT IS SO ORDERED.

17                               # # #  
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24 Date: August 25, 2022

  
Scott C. Clarkson  
United States Bankruptcy Judge